

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for Nexium 40 mg capsules.
- b. The request was received on August 19, 2002.

II. EXHIBITS

1. Requestor, Exhibit 1:
 - a. TWCC 60 and Letter Requesting Dispute Resolution
 - b. Table of Disputed Services
 - c. EOB
 - d. Redacted EOBs
 - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
 - a. TWCC 60
 - b. Carrier representatives' position statement dated 10/18/02.
 - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on October 1, 2002. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on October 2, 2002. The response from the insurance carrier was received in the Division on October 18, 2002. Based on 133.307 (i) the insurance carrier's response is untimely so the Commission shall issue a decision based on the request.
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:

a. Texas Mutual Insurance Company's initial EOB denial dated 4/8/02 states:

"F - Payment is being made without this carrier exercising its right under 28 Tex. Admin. Code Sec. 139.301 & 134.502 to question the medical necessity of this drug. This carrier reserves its right to question and deny further bills for this.

b. Texas Mutual Insurance Company's reconsideration denial dated 6/4/02 partially states:

- We [respondent] adjusted the reimbursement to what our data indicates is your usual and customary charge, which is the maximum allowable reimbursement under Commission Rule 134.503
- We [respondent] based this adjustment on data provided to us by a third-party, which has extensive data on pharmacies' actual usual and customary charges.
- Affidavit will allow us to rely on your representation that the amount billed us is less than or equal to the average charge you normally bill for this for this prescription to payors outside the workers' compensation system.
- If you fill out and return the attached affidavit, we will pay the lesser of your usual and customary charge, the fees established by the formulas in Rule 134.503 (2) or negotiated or contract amount.

c. The requestor's representative states in the correspondence dated 9/30/02 that:

- Walgreens' charge to Respondent Texas Mutual strictly complied with TWCC Rule 134.503, which provides that insurance carriers must reimburse providers the lesser of an amount calculated using a formula adopted by TWCC, the provider's usual and customary charge for the same or similar service or a negotiated payment established for providers participating in a workers' compensation preferred provider benefit plan.
- Walgreens and Respondent Texas Mutual have not entered a negotiated payment amount for workers' compensation prescriptions, and Walgreens submitted evidence and affidavit testimony that its usual and customary charge, which does not exceed the TWCC formula, was submitted in its invoice to Respondent Texas Mutual.
- Respondent Texas Mutual has uttered but one single letter, 'F', as its rationale for its payment reduction.
- Walgreens' evidence and affidavit testimony supporting its usual and customary charge in this case, thus, stand uncontested.
- The response of 'F' is no response at all, violates the provisions of TWCC Rule 133.307, and deprives Walgreens of a meaningful opportunity to respond to the position of Respondent Texas Mutual in this case.

d. Walgreen's statement of disputed issues states:

- The claim sought reimbursement for NEXIUM 40 mg capsules (NDC #00186-5040 - 31) (quantity 30) dispensed to an injured worker insured by Texas Mutual and indicated that Walgreens' usual and customary charge for NEXIUM 40 mg capsules (NDC #00186-5040-31) (quantity 30) dispensed to Texas workers' compensation claimants was \$145.17.
- Texas Mutual was to process and pay this claim in accordance with the Act and fee guidelines adopted by TWCC.
- Texas Mutual limited reimbursement to Walgreens, claiming that it was making a fee guideline reduction without any further explanation other than stating that Texas Mutual was reserving its right to question the medical necessity of the drug at issue.
- On May 14, 2002, Walgreens requested Texas Mutual reconsider the unilateral payment reduction.
- Texas Mutual denied Walgreen's request for reconsideration stating, as the sole basis for its payment determination, that:

We adjusted the reimbursement to what our data indicates is your usual and customary charge, which is the maximum allowable reimbursement under Commission Rule 134.503. As stated in our EOB, we based this adjustment on data provided to us by a third-party, which has extensive data on pharmacies actual usual and customary charges...

- Notwithstanding that the *EOB* failed to mention anything about the payment reduction being based upon data supplied by some unnamed third-party, there simply is no basis for Texas Mutual's decision to unilaterally estimate usual and customary charges based on information other than Walgreens' own statement of its usual and customary charge for the same or similar service as submitted with this claim.
- Tex. Admin. Code 134.503 expressly states that payment is to be limited to the *provider's* (in this case, Walgreens') usual and customary charge for the same or similar service, not to a charge calculated, estimated or otherwise established by Texas Mutual, its agents, or some unidentified third-party.
- Walgreens' usual and customary charge to all insurance carriers for NEXIUM 40 mg capsules (NDC 3 00186-5040-31) (quantity 30) dispensed to Texas workers' compensation claimants was \$145.17.
- TWCC's regulations provide that the pertinent reimbursement limit is the pharmacy's usual and customary charge for services equivalent or similar to those provided in connection with prescriptions dispensed to workers' compensation patients.
- Because of the unique aspects of workers' compensation, the only services provided by Walgreens that are equivalent to those provided in connection with the prescription at issue in this case are the services Walgreens has provided in connection with other workers' compensation prescriptions

- These unique aspects...verification that claims relate to workplace injuries, identification of insurers providing coverage and their adjustors, the preparation of submission of manual claims forms, verification of eligibility for compensation and the extension of credit pending payment by insurers that is not required until 60 days after the submission of 'clean claims.'
 - Walgreens requests that the TWCC grant this medical dispute resolution request and find that Walgreens is entitled to reimbursement of the entire amount billed Texas Mutual...
- e. Affidavit of Jenny Causey, accounts receivable manager responsible for workers compensation accounts receivable department of Walgreen Co, dated August 16, 2002 states:
- From January 15, 2002 to July 11, 2002, Walgreens, without exception, charged \$145.17 NEXIUM 40 mg capsules (NDC #00186-5040-31) (quantity 30) dispensed to all Texas workers' compensation claimants, regardless of the claimants' insurance carrier.
 - These EOBs and related documents depict Walgreens' charge to Texas workers' compensation insurance carriers for the drug identified in this paragraph.
 - Walgreens provides unique services to workers' compensation customers. These services include, among other things, verification that claims relate to workplace injuries, identification of insurers providing coverage and their adjustors, the preparation of submission of manual claims forms, verification of eligibility for compensation and the extension of credit pending payment by insurers that is not required until 60 days after the submission of 'clean claims.'
2. Respondent:
- a. The response was not timely and consequently not eligible for review.

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 3/12/02.
2. Review of the redacted EOBs submitted by the requestor reveals that the requestor has billed six different carriers (Liberty Mutual, Ysleta Independent School District, Union Standard, NHR, City of Austin, and Crawford & Company) in the amount of \$145.17 for the prescription Nexium 40 mg #30 (NDC # 00186504031).
3. Review of the documentation submitted by Walgreen's demonstrated that the usual and customary charge for Prilosec 20 mg, for injured workers in the workers' compensation system was the same amount billed as noted on the six (6) EOBs listed above. The documentation did not contain the usual and customary charge data for prescriptions prescribed to the non-workers' compensation injured workers. This information is

required to determine the usual and customary charge for same or similar treatment to patients' outside the workers' compensation system, as set forth by the Texas Labor Code, Section 415.005(a). The carrier contends that Walgreen's has not been charging their usual and customary charge to all participants (private pay, private insurance and workers' compensation system). The requestor supplied redacted copies of EOBs to support their usual and customary charge to carriers participating in the workers' compensation system, however, did not supply redacted copies of EOBs for customers outside of the workers' compensation system. The carrier did not provide the commission with sufficient and convincing evidence that \$145.17 is Walgreen's usual and customary charge.

4. Therefore, the requestor did not establish the usual and customary charge for Nexium 40 mg in order to apply Rule 134.503(a)(1-2), which would determine the lesser of the charges. Per Rule 134.503, the requestor is not entitled to the requested additional reimbursement for the charge in dispute.

The above Findings and Decision are hereby issued this 19th day of December 2002.

Margaret Q. Ojeda
Medical Dispute Resolution Officer
Medical Review Division

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